U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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September 21, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "The Federal Transit Administration's Proposed Rule on the New Starts and Small Starts Programs"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, September 26, 2007 at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the Federal Transit Administration's ("FTA") proposed rule on the New Starts and Small Starts programs. The Subcommittee will hear from the Administrator of FTA, a Member of the Arlington County, Virginia Board, the Executive Director of Hampton Roads Transit, the General Manager of the Kansas City Area Transportation Authority, and the President and CEO of Reconnecting America, a nonprofit organization currently conducting research for FTA.

BACKGROUND

The New Starts and Small Starts programs, codified at 49 U.S.C. §5309, are the Federal government's primary programs for supporting transit capital investments for the construction of new transit systems and extensions to existing systems, including subways, commuter rail, light rail, streetcars and bus rapid transit ("BRT"). These transit systems improve the mobility of millions of Americans, help to reduce congestion and improve air quality in the areas they serve, and foster the development of more economically viable, safe, and livable communities.

Congress created the New Starts program in the Urban Mass Transportation Act of 1964 ("UMTA") to fund major investments in the transit infrastructure of urbanized areas. Since then, the New Starts program has helped to make possible dozens of rail transit fixed guideway systems across the country. Transit project sponsors seeking more than $75,000,000 in Federal New Starts funds must apply to FTA under the New Starts program criteria at 49 U.S.C. §5309(d).

The Small Starts program was created in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). Transit project sponsors seeking less than $75,000,000 in Federal funds for a project with a total estimated net capital cost of less than $250,000,000 may apply to FTA under the Small Starts program criteria at 49 U.S.C. §5309(e). The Small Starts program is designed to include fewer criteria and grant requirements, allowing for a more simplified FTA review.

Until the passage of SAFETEA-LU, transit projects seeking less than $25,000,000 in Federal New Starts or Small Starts funds were exempt from FTA evaluation altogether. In SAFETEA-LU, Congress continued this exemption only until FTA issues regulations establishing an evaluation and rating process for the Small Starts program. Until such a rule is finalized, however, these very small scale projects can still receive and obligate Federal funds without a formal FTA evaluation process.

FTA's Implementation of the Statutory Requirements of the New Starts and Small Starts Programs

New Starts and Small Starts projects may be approved for Federal funding only if they meet three basic requirements. SAFETEA-LU directs that each New Starts and Small Starts project justification factor be rated on a five-point scale including high, medium-high, medium, medium-low, and low designations. For a New Starts project, the selection criteria are as follows:

1. The project must be based on the results of an alternatives analysis and preliminary engineering.
2. The project must be justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns (collectively know as project justification criteria).
3. The project must be supported by an acceptable degree of local financial commitment.

For a Small Starts project, the selection criteria are as follows:

1. The project must be based on the results of planning and alternatives analysis.
2. The project must be justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development (collectively know as project justification criteria).
3. The project must be supported by an acceptable degree of local financial commitment.

Of these basic requirements, the project justification criteria receive by far the most attention in the statute, and Congress directs FTA to conduct a "comprehensive review" of these criteria for each project. To date, however, FTA has not fully incorporated all of the Congressionally mandated project justification criteria into either the New Starts or Small Starts programs. FTA continues to place more emphasis on one single criterion – cost effectiveness – and does not distinguish the economic development benefits of transit projects from local land use factors.

Cost effectiveness is currently measured as the incremental cost per hour of transportation system user benefits in the forecast year and is weighted at 50 percent of the total project rating. Land use is measured by FTA in three ways: existing land use in the study corridor, transit supportive plans and policies, and performance and impacts of policies. Land use is also currently weighted at 50 percent of the total project rating. FTA currently has no method of independently analyzing or measuring the economic development criterion, nor does FTA currently give weight in the project evaluation to environmental benefits.

FTA's Notice of Proposed Rulemaking on the New Starts and Small Starts Programs

FTA is currently in the process of undertaking a rulemaking on the New Starts and Small Starts programs as required by SAFETEA-LU. FTA issued its formal Notice of Proposed Rulemaking ("NPRM") on August 3, 2007 (72 Fed. Reg. 43328). In the NPRM, FTA articulates various proposals for implementing changes to the New Starts and Small Starts programs. This hearing will explore this NPRM in depth, and Members will hear from witnesses who are working on transit projects and initiatives that would be affected by the rule. The deadline for comments on the NPRM is November 1, 2007.

The NPRM has raised both Congressional and transit industry concerns. The Administration considers the New Starts/Small Starts rule to be a significant rulemaking and, if finalized, the transit industry will be governed by this rule for a number of years to come. The topics within the NPRM that have elicited the most concern thus far are:

1. FTA's failure to consider the economic development benefits of transit projects in a meaningful way, or as a separate and distinct criterion;
2. FTA's proposal to establish in regulation this Administration's policy to give the cost effectiveness criterion greater weight than all of the other statutorily mandated criteria combined;
3. FTA's proposal to utilize congestion pricing and innovative contracting strategies as "other" criteria that could either increase or decrease a transit project's final rating; and
4. FTA's proposal to create an evaluation framework for "Very Small Starts" projects that is arguably not mode-neutral.

Following is a more detailed discussion of FTA's treatment of the four issues highlighted above in its New Starts/Small Starts NPRM.

FTA's Treatment of the Economic Development Criterion in the NPRM

Transit lines and stations increase communities' property values, efficiently link workers and businesses, and stimulate job creation. For example, a University of North Texas study found that between 1997 and 2001, commercial properties located near Dallas Area Rapid Transit stations increased in value 24.7 percent, while commercial properties not served by rail increased in value by only 11.5 percent. Residential properties near the stations rose in value 32.1 percent, compared to a 19.5 percent increase for residences not served by a rail station.

Congress included the economic development criterion in the law with the intent that economic development impacts of transit projects be considered in the New Starts and Small Starts evaluation processes. In response to the SAFETEA-LU requirement that the agency issue a report on economic development evaluation methodology, FTA issued a January 2006 letter to Congress which stated: "Predicting economic development impacts of transit improvements is a particular challenge. No predictive tools are available in standard practice and development of new tools is infeasible in the short run."

Several economists, research institutions, and other organizations have refuted this claim with studies and economic models that quantify the economic development effects of transit investments. Nevertheless, FTA has not established a separate economic development criterion for the evaluation of New Starts and Small Starts projects, nor has it proposed a method for capturing the economic development benefits of transit in the project ratings. FTA does, however, solicit in the NPRM comments on a methodology to quantify these benefits, acknowledging that changes in economic development and land use may provide benefits that are not otherwise included in current evaluations.

One tangible benefit of economic development around transit stations is the resulting "trip not taken" in a private automobile. For example, when a new transit station spurs economic development around the station area in the form of new residences and businesses, those riders who walk from their residence or place of work to the transit station instead of driving provide a benefit to that area in the form of relieving roadway congestion and reducing oil consumption and pollution. FTA, however, argues that there are no models that can predict the number of transit riders who walk or use non-motorized transportation to access transit and does not allow transit project sponsors to count these riders in their project estimates or the benefits they bring to the community. As a result, certain transit riders who live or work near proposed transit lines and stations are not included in the calculations of a project's economic development or land use benefits, or in determining a project's cost effectiveness by FTA.

FTA's Treatment of the Cost-Effectiveness Criterion in the NPRM

SAFETEA-LU directs that each New Start and Small Start project be rated against the project justification criteria enumerated in the statute, though the law does not specify the relative weight that each project justification criterion should be given. However, since the issuance of an April 2005 "Dear Colleague" letter announcing the new policy, the Administration recommends for federal funding only those projects which receive a "medium" or better rating for the singular cost effectiveness criterion, regardless of the overall project rating. In essence, this administrative treatment of cost-effectiveness made this one criterion more important than any of the other statutorily required measures.

In SAFETEA-LU, the New Starts evaluation process was amended by elevating the consideration of non-cost related transit investment benefits, such as land use and economic development effects, to a more prominent section in the law. However, in the NPRM, FTA proposes to lock into regulation a numerical weight of 50 percent for the cost effectiveness criterion, and at the same time, proposes to combine the two separate statutory criteria of land use and economic development into one criterion and assign it a combined weight of 20 percent. The NPRM further proposes to count mobility benefits as 20 percent, environmental benefits as 5 percent, and benefits to transit dependent riders as 5 percent of the total project rating. Thus, instead of giving greater consideration to the economic development and land use benefits of transit, as was intended by elevating these two separate criteria in SAFETEA-LU, FTA is giving the two combined criteria much less weight in the evaluation process than land use currently receives.

For a Small Starts project, the NPRM would similarly weight cost effectiveness at 50 percent of the total project rating, mobility at 20 percent and a combined economic development and land use criteria would comprise 30 percent of the total project rating.

FTA's Inclusion of Innovative Contracting and Congestion Mitigation Factors into the New Starts and Small Starts Programs via the NPRM

Another proposal advanced by FTA in the NPRM is its intention to include both innovative contracting and congestion pricing factors into the New Starts and Small Starts programs. Specifically, FTA is proposing to either increase or decrease a project's rating based on two new factors:

1. If the project has provided the opportunity for the operation and maintenance of the project to be contracted out; or
2. If the project is a principal element of a congestion management strategy, in general, and a pricing strategy, in particular.

Congress did not include these factors in either the primary project justification criteria or in the broader statutory language of 49 U.S.C. §5309. However, the statutory authority for FTA to consider additional factors that are not explicitly included in the list of New Starts or Small Starts evaluation criteria is the language that allows the consideration of "other factors that the Secretary determines to be appropriate to carry out the subsection." As such, the Administration is proposing to include these two factors to support the Department of Transportation ("DOT") congestion initiative.

A third congestion mitigation factor that is proposed in the NPRM is an expanded eligibility in the use of Federal New Starts funds to allow these funds to pay for the construction of high occupancy toll ("HOT") lanes, on which transit vehicles and high occupancy vehicles ("HOVs") would run without charge and on which single-occupancy vehicles could pay a toll to use, so long as free-flow conditions were maintained. Concerns have been raised that this expanded eligibility may exceed the statutory definition of transit fixed guideway projects under 49 U.S.C. §5302(a), which explicitly authorizes construction of HOV lanes (but not HOT lanes) with Federal transit funds.

FTA's Creation of the Very Small Starts Program in the NPRM

FTA proposes in the NPRM to create a new set of project eligibility standards and apply them to a subset of Small Starts projects. FTA would name this the Very Small Starts program and would pre-qualify certain Small Starts projects for automatic approval of the project justification criteria if they meet the following proposed criteria:

1. Have a total capital cost less than $50 million;

2. Cost less than $3 million per mile, exclusive of rolling stock.; and
3. Are located in corridors with at least 3,000 average weekday existing riders.

These new project eligibility standards are not established in statute, and concern about this approach to very small transit projects has been raised by the transit industry, particularly by those communities pursuing streetcar projects. Nearly all streetcar projects have average costs greater than $3 million per mile. As such, this eligibility criterion would effectively bar streetcar projects from entering the Very Small Starts program. BRT projects, however, could more easily meet the per-mile standard, thus increasing the likelihood that they would be eligible for these Federal funds. The Small Starts program was created in SAFETEA-LU to be a simpler, faster FTA evaluation process for lower cost transit projects, including light rail, commuter rail, streetcars and BRT. Care was taken by Congress to ensure that the program would be mode-neutral. By including the $3 million cost-per-mile eligibility standard in the NPRM, however, FTA proposes to establish a program that could not likely be accessed by all transit modes.

Senate Amendment Limiting the NPRM

On September 12, 2007, during Senate consideration of H.R. 3074, the FY 2008 Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, an amendment by Senators Dodd and Shelby of the Committee on Banking, Housing and Urban Affairs was adopted that prohibits FTA from using funds appropriated under the Act to promulgate regulations to carry out section 5309 of title 49, United States Code. (The House had concluded its consideration of H.R. 3074 on July 24, 2007, before FTA published the NPRM.) If this funding limitation is retained, the New Starts/Small Starts rulemaking process would be effectively halted for the 2008 fiscal year.

PREVIOUS SUBCOMMITTEE ACTION

The Subcommittee on Highways and Transit last held a hearing on the New Starts and Small Starts programs on May 10, 2007. The focus of the hearing was on FTA's implementation of these programs, and included witnesses from FTA, the U.S. Government Accountability Office (GAO), several transit agencies, and an economist.

WITNESS LIST

PANEL I

The Honorable James S. Simpson
Administrator
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PANEL II

Mr. Christopher Zimmerman
Member
Arlington County Board
Arlington, VA

Mr. Michael Townes
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